



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

N

FILE: [REDACTED] Office: Vermont Service Center

Date: JAN 18 2000

IN RE: Applicant: [REDACTED]

APPLICATION:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under § 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(A)(iii)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, due to abandonment and is now before the Associate Commissioner for Examinations on a motion to reopen. The motion will be dismissed.

The applicant is a native and citizen of El Salvador who was present in the United States without a lawful admission or parole in 1993. He applied for political asylum and that application was denied by an immigration judge in 1996. The applicant was granted voluntary departure in lieu of deportation but failed to depart voluntarily. The applicant was removed from the United States on March 12, 1998. Therefore he is inadmissible under § 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(A)(ii). The applicant married a U.S. citizen in El Salvador on April 16, 1998 and he is the beneficiary of an approved immediate relative visa petition. The applicant seeks permission to reapply for admission into the United States under § 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii), to return to the United States.

The director requested additional documentation for the record and granted the applicant additional time in which to submit that documentation pursuant to 8 C.F.R. 103.2(b)(8). After failing to receive that documentation by the designated date, the director considered the application abandoned and denied it pursuant to 8 C.F.R. 103.2(b)(13).

On motion, the applicant states that he never had any notice or request to submit additional documentation. The applicant indicates that authorization was given to the Immigration and Naturalization Service to send all notices, letters, etc., to [REDACTED]. The record reflects that the Service sent all notices to that address as directed by the applicant.

8 C.F.R. 103.2(b)(15) provides that a denial due to abandonment may not be appealed, but the applicant may file a motion to reopen under 8 C.F.R. 103.5 and such denial does not preclude the filing of a new application.

8 C.F.R. 103.5(a)(2) provides that a motion to reopen an application denied due to abandonment must be filed with evidence that the decision was in error because (iii) the request for additional information was sent to an address other than that on the application, petition or notice of representation, or that the applicant advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent and the request did not go to the new address.

The record indicates that the address referenced by the applicant on motion, [REDACTED], was available to the Vermont Service Center as early as December 3, 1998 when it sent the notice of approval of the visa petition filed by [REDACTED] to that address.

Since the Service sent its request for additional information to the proper address on February 12, 1999 and there is no evidence that the director's decision was in error, the motion will be dismissed.

ORDER: The motion is dismissed.